

No. 14905

**United States
Court of Appeals**
For the Ninth Circuit

ALFREDO RAMIREZ GARCIA,

Appellant,

vs.

HERBERT BROWNELL, Attorney General of the
United States, and ALBERT DEL GUERCIO,
Officer in Charge Immigration & Naturalization
Service at Los Angeles, California,

Appellees.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

DAVID C. MARCUS,
215 West Fifth Street,
Los Angeles, California.

Attorney for Appellee:

LAUGHLIN E. WATERS,
U. S. Attorney;

MAX F. DEUTZ,
JAMES R. DOOLEY,
Assistants U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

United States District Court, Southern District of
California, Central Division

Civil Action No. 18130

ALFREDO RAMIREZ GARCIA,

Petitioner,

vs.

HERBERT BROWNELL, Attorney General of the
United States, and ALBERT DEL GUERCIO,
Officer in Charge, Immigration and Naturaliza-
tion Service at Los Angeles, California.

PETITION FOR DECLARATORY JUDGMENT
AND FOR DETERMINATION OF UNITED
STATES CITIZENSHIP

Petitioner complains and alleges:

I.

That Herbert Brownell is the Attorney General of the United States and the head of the Department of Justice, Immigration and Naturalization Service. That Albert Del Guercio is the Officer in Charge of said Immigration and Naturalization Service and the head of such Service at Los Angeles, California.

II.

Jurisdiction is invoked pursuant to section 360(a) of Public Law 414, Section 2201, Title 28, U.S.C.A., and Article III and the fourteenth amendment of the Constitution of the United States. [2*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

III.

Petitioner, Alfredo Ramirez Garcia, was born at Gardena, Los Angeles County, California, on the 27th day of March, 1926.

IV.

Petitioner contends and alleges that he is now, and ever since the date of his birth has been, a constitutional citizen of the United States pursuant to the fourteenth amendment of the Constitution of the United States.

V.

When seven years of age your petitioner was taken by his father, Francisco Ramirez, and mother, Petra Garcia, to Villa Santiago, Gto., Republic of Mexico. That petitioner continued to reside at said place in the Republic of Mexico until in or about the year 1943 in October, at which time he journeyed to Tijuana, Republic of Mexico, and requested permission from the officers of the United States Immigration and Naturalization Service at San Ysidro, California, the port of entry into the United States from the Republic of Mexico, to enter the United States, claiming that he was a native-born citizen of the United States, and in support thereof presented his baptismal certificate, which certificate indicated that petitioner was born at Gardena, California, on the 27th day of March, 1926.

VI.

That at said time and place your petitioner was denied the right to enter the United States by said

officers of the Immigration and Naturalization Service; that said officers stated that they would consider his request to enter the United States if and when he presented an official birth certificate issued by the State of California. That thereafter, on several occasions, your petitioner made further demand and request of said Immigration officers for permission to enter the United States, and on each of said occasions was denied such admission. [3]

VII.

Petitioner alleges that he attended three years approximately of schooling in the Republic of Mexico; that he was not possessed of sufficient knowledge or information as to how or in what manner he could obtain his certificate of birth, and that he is or was at the time unable to read or write the English language. That after repeated attempts to enter the United States and being denied such right of entry, and not having any knowledge of the existence of any birth certificate or the manner or means of acquiring the same, he inquired of friends in the Republic of Mexico as to how he could secure a copy of his birth certificate, and was informed that when they came to the United States they would make inquiry on his behalf and attempt to secure a copy of said birth certificate for him. That such persons did secure a copy of petitioner's birth certificate for him during the year 1946; that thereafter, and on or about the 1st day of July, 1946, your petitioner presented said birth certificate to the officers of the said Immigration and Naturalization Service at Tijuana and was thereupon permitted

to enter the United States, and did enter the United States at said time as a native-born citizen of the United States.

VIII.

That immediately upon petitioner's entry into the United States he registered under the Selective Service and Training Act during the month of July, 1946, at Compton, California, before the local board of said district; that thereafter your petitioner was classified as 1-A by said board.

IX.

Thereafter, and in the month of September, 1946, your petitioner journeyed to Tijuana, Mexico, to visit with his relatives at said place, remained there for one day and returned to the United States at San Ysidro, California, the port of entry; that he presented his birth certificate, together with his Selective Service [4] registration certificate, to the officers in charge of said port of entry of said Immigration and Naturalization Service, and was thereupon denied permission to enter the United States as an American citizen; that he was advised at said time that he could not enter the United States, but if he desired he could return to said port of entry and make application for entry in the month of February, 1947; that your petitioner did return to said port of entry on February 19, 1947, at which time, as your petitioner is informed and believes and therefore alleges, a hearing was held before a Board of Special Inquiry of said Immigration and Naturalization Service; that at the termination of

said board hearing, your petitioner was denied permission to enter the United States and was excluded therefrom.

X.

That petitioner remained in the Republic of Mexico until on or about the 20th day of March, 1947, and did at said time enter the United States at San Ysidro, California, upon his claim of United States citizenship.

XI.

That your petitioner again registered for military service at Gardena, Los Angeles County, California, on the 9th day of September, 1948, before the local Selective Service Board at said place. That your petitioner was classified as 2-A by said board on February 25, 1949.

XII.

Thereafter, in the month of February, 1951, your petitioner journeyed to Tijuana, Mexico, to visit with relatives, and remained there a matter of approximately five days; that upon his return to the United States and upon the presentation of his birth certificate and Selective Service registration certificate, your petitioner was denied permission to enter the United States as a native-born constitutional citizen. That thereafter your petitioner returned to said port of entry at San Ysidro, California, and entered the United [5] States on or about September 21, 1951, and ever since said time has lived and resided in the United States and now resides at Gardena, Los Angeles County, California, within the district and jurisdiction of the above-

entitled Court. That your petitioner claims the right and privilege as a native-born constitutional citizen of the United States; that he has been denied such right by officers of the United States Immigration and Naturalization Service and by the respondents herein, who contend that petitioner is not a national of the United States; that as your petitioner is informed and believes and therefore alleges, said denial of his rights and privileges as a citizen of the United States is predicated upon the contention of the respondents herein that petitioner had departed and remained out of the United States for the purpose of evading and avoiding training and service in the military, air or naval forces of the United States during time of war or during a period proclaimed by the President to be a period of national emergency.

XIII.

Petitioner denies that he did depart from or did remain out of the United States for the purpose of evading or avoiding military service as aforesaid, and alleges the fact to be that he did not remain out of the United States for the purpose of evading or avoiding military service whatsoever. That he has at all times during time of war or during such period of national emergency been willing to serve and enter the military service of the Government of the United States, and that the determination by respondents that your petitioner departed from and remained out of the United States for the purpose of evading or avoiding military service is not true in fact, or predicated upon any lawful reason or

upon any substantial or probative evidence, but is in violation of petitioner's rights and privileges as a constitutional citizen of the United States and in further violation of the fifth and fourteenth amendments of the Constitution of the United States. [6]

XIV.

Petitioner alleges that his exclusion from the United States and the denial of his rights and privileges as a citizen of the United States occurred at the hearings conducted before the Immigration and Naturalization Service in 1947 and 1951, prior to the enactment of the provisions of Section 1503 of Title 8, U.S.C.A. Your petitioner alleges that his status as a national of the United States is not now in issue in any pending exclusion proceedings, and did not arise by or in connection with any exclusion proceedings or is an issue in any such exclusion proceedings since the enactment of said Section 1503 of Title 8, U.S.C.A., which statute became effective on December 26, 1952.

Wherefore, your petitioner prays:

(1) That it be declared, ordered and adjudged that your petitioner, Alfredo Ramirez Garcia, is a citizen of the United States; and,

(2) For such other and further relief as to the Court may seem just and proper.

/s/ DAVID C. MARCUS,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed May 3, 1955. [7]

[Title of District Court and Cause.]

NOTICE OF MOTION AND
MOTION TO DISMISS

Notice of Motion to Dismiss

To the Petitioner Above Named and to David C.
Marcus, His Attorney:

You and Each of You Will Please Take Notice that the respondents above named, by and through the undersigned, will bring the following Motion to Dismiss on for hearing before the above-entitled Court, in the Courtroom of the Hon. William M. Byrne, United States District Judge, in the United States Post Office and Court House Building, 312 North Spring St., Los Angeles 12, California, on Monday, the 25th day of July, 1955, at 9:45 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: This 12th day of July, 1955.

LAUGHLIN E. WATERS,

United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,

Assistant U. S. Attorney, Attorneys for Respondents. [10]

MOTION TO DISMISS

Respondents above named, reserving all objections to the jurisdiction of this Court, by and

through the undersigned, move the Court to dismiss the within action pursuant to Rule 12(b) (1), (2), (6), Federal Rules of Civil Procedure, on the following grounds:

1. Lack of jurisdiction over the subject matter.
2. Lack of jurisdiction over the person.
3. Failure to state a claim upon which relief can be granted.

This Motion is based upon and will be presented upon the Petition for Declaratory Judgment and for Determination of United States Citizenship on file herein, the Affidavit of Albert Del Guercio, hereto annexed as Exhibit A, the certified record of the Immigration and Naturalization Service relating to Alfredo Ramirez Garcia hereto annexed as Exhibit B, these Motion papers and Memorandum of Points and Authorities in support thereof, together with all the records and files herein.

Dated: This 12th day of July, 1955.

LAUGHLIN E. WATERS,

United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,
Chief of Civil Division;

/s/ JAMES R. DOOLEY,

Assistant U. S. Attorney, Attorneys for Respondents. [11]

[Title of District Court and Cause.]

AFFIDAVIT OF ALBERT DEL GUERCIO

United States of America,
Southern District of California—ss.

Albert Del Guercio, first being duly sworn, deposes and says:

I.

That he is the Officer in Charge, Immigration and Naturalization Service, Department of Justice, Los Angeles, California, and as such is custodian of the records of the United States Immigration and Naturalization Service in said Suboffice.

II.

That the record file No. A6 599 817 of the United States Immigration and Naturalization Service relating to Alfredo Ramirez-Garcia, the petitioner in Civil Action No. 18130-C, Southern District of California, Central Division, reflects that said petitioner was excluded from admission to the United States by a Board of Special Inquiry at San Ysidro, California, on February 19, 1947, after a full fair hearing on the ground that he was an immigrant alien who did not have in his possession a valid immigration visa as required by the Immigration Act of May 26, 1924, and not exempt from presenting such a document [17] by the said Act or regulations made thereunder; he having expatriated himself as a citizen of the United States under the provisions of Section 401(j) of the Nationality Act of 1940,

as amended, by remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency, for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

III.

That at the conclusion of the Board of Special Inquiry hearing the petitioner immediately entered an appeal to the Commissioner of the Immigration and Naturalization Service at Washington, D. C., from the excluding decision of the Board of Special Inquiry.

IV.

That on March 25, 1947, the Commissioner of the Immigration and Naturalization Service affirmed the excluding decision of the Board of Special Inquiry and referred the case to the Board of Immigration Appeals for consideration.

V.

That on March 31, 1947, the Commissioner's order of March 25, 1947, was affirmed by the Board of Immigration Appeals.

VI.

That on September 19, 1951, the petitioner applied for admission to the United States at the port of entry at San Ysidro, California, and was thereupon advised by an Immigration officer to return the following day, September 20, 1951, for further

proceedings pursuant to his application for admission.

VII.

That the petitioner failed to return to the port of entry at San Ysidro, California, on September 20, 1951, or thereafter, for further proceedings pursuant to his application for admission.

VIII.

That the record file of the United States Immigration and Naturalization Service No. A6 599 817, relating to the petitioner, does not disclose any further proceedings or any record of lawful entry into the United States of the said petitioner subsequent to his exclusion by the Board of Special Inquiry at San Ysidro, California, on February 19, 1947.

/s/ ALBERT DEL GUERCIO.

Subscribed and sworn to before me this 23rd day of June, 1955.

JOHN A. CHILDRESS,

Clerk, U. S. District Court;

By /s/ SIDNEY H. GREEN,

Deputy Clerk.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 12, 1955. [18]

United States District Court, Southern District of
California, Central Division

No. 18130-WB Civil

ALFREDO RAMIREZ GARCIA,

Petitioner,

vs.

HERBERT BROWNELL, Attorney General of the
United States, and ALBERT DEL GUERCIO,
Officer in Charge, Immigration and Naturaliza-
tion Service at Los Angeles, California,

Respondents.

ORDER OF DISMISSAL

The above-entitled matter came on regularly for hearing on respondents' Motion to Dismiss on July 25, 1955, in the above-entitled Court, before the Hon. William M. Byrne, Judge Presiding, the petitioner being represented by his attorney, David C. Marcus, and the respondents being represented by their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and James R. Dooley, Assistants U. S. Attorney, by James R. Dooley; and the Court having considered respondents' Motion, Memoranda of counsel in regard thereto, together with all the records and files herein; and the Court having taken said Motion under submission, and being fully advised in the premises:

Now, Therefore, It Is Hereby Ordered:

1. That the Petition for Declaratory Judgment and for Determination of United States Citizenship

on file herein be, [40] and the same is hereby dismissed for failure to state a claim upon which relief can be granted [Rule 12(b)(6), Federal Rules of Civil Procedure].

2. That respondents have costs against the petitioner, taxed at \$20.00.

Dated: This 10th day of August, 1955.

/s/ W. M. BYRNE,

Judge, U. S. District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 10, 1955.

Judgment docketed and entered August 11, [41] 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Alfredo Ramirez Garcia, petitioner herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of Dismissal entered in the above-entitled proceedings on August 11, 1955, and from the whole thereof.

Dated this 17th day of August, 1955.

/s/ DAVID C. MARCUS,

Attorney for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 23, 1955. [43]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It appearing that the Clerk of the above-entitled Court does not have sufficient time to prepare the record on appeal in the above-entitled matter within the period allowed, and good cause appearing therefor,

It Is Hereby Ordered that the above-named petitioner may have to and including October 14, 1955, to file the record and docket the appeal in the United States Court of Appeals for the Ninth Circuit.

Dated this 29th day of September, 1955.

/s/ W. M. BYRNE,

United States District Judge.

[Endorsed]: Filed September 28, 1955. [49]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 49, inclusive, contain the original

Petition for Declaratory Judgment;

Motion and Notice of Motion to Dismiss together with Memo of Points and Authorities in Support thereof;

Order of Dismissal;

Notice of Appeal Designation of Record on Appeal;

Counter Designation of Record on Appeal;
Order Extending Time to File Record on
Appeal

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further Certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 14th Day of October, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 14905. United States Court of Appeals for the Ninth Circuit. Alfred Ramirez Garcia, Appellant, vs. Herbert Brownell, Attorney General of the United States, and Albert Del Guercio, Officer in Charge Immigration & Naturalization Service at Los Angeles, California, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 18, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14905

ALFREDO RAMIREZ GARCIA,

Petitioner-Appellant,

vs.

HERBERT BROWNELL, Attorney General of the
United States, et al.,

Respondents-Appellees.

STIPULATION

It Is Hereby Stipulated by and between respective counsel hereto that the certified record of the Immigration and Naturalization Service relating to Alfredo Ramirez Garcia, attached as Exhibit "B" to the Motion to Dismiss, need not be printed but may be used by the above-entitled Court in its original form.

Dated this 31st day of October, 1955.

/s/ DAVID C. MARCUS,
Attorney for Appellant.

LAUGHLIN E. WATERS,
U. S. Attorney;

By /s/ JAMES R. DOOLEY,
Attorneys for Appellees.

[Title of Court of Appeals and Cause.]

ORDER

Upon reading and filing the foregoing stipulation, and good cause appearing therefor:

It Is Ordered that the certified record of the Immigration and Naturalization Service relating to Alfredo Ramirez Garcia, attached as Exhibit "B" to the Motion to Dismiss, need not be printed, but may be used by the above-entitled Court in its original form.

Dated this....day of November, 1955.

.....,

Judge.

[Endorsed]: Filed November 3, 1955.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL

Appellant designates the following statement of points on appeal.

1. That the Court erred in dismissing the proceedings.

2. That the Court erred in denying petitioner the right to a judicial review of the proceedings before the Department of Justice, Immigration and Naturalization Service.

3. That the Court erred in denying petitioner a trial de novo on his claim of United States citizenship.

4. That section 360(a) of Public Law 414, wherein a native-born citizen of the United States is denied a hearing upon his claim of United States citizenship because his status as a citizen may have arisen out of or be an issue in exclusion proceedings, is unconstitutional.

5. That the Court erred in granting the motion to dismiss and in holding section 360(a) of Public Law 414 constitutional.

6. That petitioner was denied due process of law and the equal protection of the laws, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

Dated this 29th day of November, 1955.

/s/ DAVID C. MARCUS,
Attorney for Appellant.

[Endorsed]: Filed November 29, 1955.

